
FINAL RECOMMENDATIONS FOR THE STATE CONTRACTORS' LICENSE BOARD

RECOMMENDATIONS OF THE JOINT SUNSET REVIEW COMMITTEE AND THE DEPARTMENT OF CONSUMER AFFAIRS (DEPARTMENT)

ISSUE #1. (CONTINUE REGULATION OF THE INDUSTRY?) Should the licensing and regulation of contracting work be continued?

Recommendation #1: *The Joint Committee and the Department recommends that the state continue regulating contracting work in order to protect consumers.*

Comments: Contracting work involves substantial consumer health and safety risk in terms of both financial harm and physical injury.

ISSUE #2. (CONTINUE WITH THE BOARD?) Should the Board be continued, or its role be limited to an advisory body and the remaining functions be transferred to the Department?

Recommendation #2: *There was no recommendation from the Department on whether this Board should be continued. (See Issue #16 for Joint Committee's recommendation.)*

ISSUE #3. (REVIEW OPTIONS TO REGULATE THE RELATIONSHIP BETWEEN HOME IMPROVEMENT CONTRACTORS AND FINANCIAL LENDING INSTITUTIONS?)

In spite of existing laws, including Board regulation of home improvement salespersons and disclosure requirements for home improvement contracts, home equity lending scams have continued. The Department has asked the Board for an assessment of this problem, and for its proposals to remedy it, but has not yet received a report of recommendations.

Recommendation #3: *The Joint Committee and the Department recommend that the Board conduct a comprehensive review of the issues surrounding home improvement contracts and home equity fraud, and report its findings to the Department and Legislature no later than January 1, 2001. The review should identify inadequacies in existing law and offer recommendations for effectively regulating the home improvement industry, particularly the relationship between home improvement contractors and financial lending institutions.*

Comments: Home equity lending fraud presents a serious consumer protection challenge in the home improvement industry. It is a growing problem for consumers who are among the most vulnerable. Fraudulent practices by lenders and home improvement contractors that result in lien-contracts secured by homes are particularly harmful to the elderly and the poor. Often, these contracts, which allow contractors to take a security interest in a home, are jointly executed by financial institutions that use non-judicial foreclosure methods to take possession of a home or to leverage consumers into loans with high interest rates, fees, and unmanageable payments.

ISSUE #4. (ESTABLISH A TASK FORCE TO REVIEW MECHANIC'S LIEN LAW?)

The Mechanic's Lien law often places homeowners and property owners at risk of financial loss for the actions of a general contractor. Clearly, the existing system, which was intended to protect interests of subcontractors, material suppliers and laborers, to assure payment for services, inappropriately transfers liability from a general contractor to a homeowner.

Recommendation #4: *The Joint Committee and the Department recommends that a labor and consumer task force once again review the issue and consider possible resolutions.*

Comments: Because the existing mechanic's lien law system allows subcontractors, materials suppliers, and laborers who have not been paid by a general contractor to file a claim against the property upon which they have worked, an individual property owner may end up paying for the illegal actions of a general contractor. Consequently, a homeowner who may have fulfilled his/her obligation by paying a general contractor for work done, still may be liable for claims by subcontractors, suppliers, and laborers if the general contractor fails to pay them. Thus, existing law essentially makes the homeowner the guarantor for the general contractor. Clearly, the existing system, which was intended to protect the interests of subcontractors, inappropriately transfers liability from a general contractor to a homeowner.

Long-standing legislative concern over this issue resulted in the introduction of several bills in the 1999 legislative session to protect residential consumers against inappropriately applied mechanic's liens. However, none of the proposed changes (including shifting liability to the subcontractor, placing additional responsibilities on the homeowner, or penalizing the general contractor) have been successful because they did not offer a viable alternative to existing law. Recognizing the tensions inherent in this issue, the Department nonetheless recommends that a labor and consumer task force once again review the issue and consider possible resolutions.

ISSUE #5. (REVIEW BOARD CLOSURE OF FIELD OFFICES?) The Board currently operates field offices throughout the state, which are open to the public and to Board licensees. Through its "re-engineering" plan the Board is proposing to close many of these offices, relocate staff, and redesign its workflow to facilitate centralization of its operations. It is unclear whether these changes will improve the quality and consistency of complaint handling and investigation of cases, reduce time frames for each, and what impact this will have on consumer and industry access to Board staff.

Recommendation #5: *The Joint Committee and the Department recommends a review by the Joint Committee of the Board's "re-engineering" plan and the impact on consumer and industry access to Board staff. The Joint Committee and the Department further recommends that this review include a study of the impact of these plans on the Board's ability to carry out its mission.*

ISSUE #6. (OTHER CHANGES NEEDED TO DEAL WITH HOME IMPROVEMENT EQUITY FRAUD AND SCAMS?) Are there additional actions or measures the Board should take to protect consumers who are harmed by registered salespersons and contractors who use retail installment contracts to create a security interest on a homeowner's property?

Recommendation #6: *The Joint Committee recommends that the Board should pursue legislation to require a bond for registered salespersons. The Board should provide similar information on its website for registered salespersons, as is provided to the consumer for licensed contractors. The Board should also improve its tracking of salespersons who are involved with contractors that may be under investigation, to assure that registered salespersons cannot continue their fraudulent activity or be inadvertently licensed as contractors. Investigators for the Board should receive training on the type of scams and fraud associated with home improvement contracting, and work more closely with local legal aid and district attorney offices involved in this issue.*

Comments: The Board indicated that it does not know the extent to which consumers are harmed by contractors or salespersons who use retail installment home improvement contracts that create a security interest on property. That it is difficult to track because of the number of agencies that have jurisdiction in this area. (The Department believes, however, that the Board should be able to better assess this problem and take appropriate action. See Issue # 3.)

The Board believes that recent legislative changes will better protect consumers and that it will continue to aggressively pursue individuals who fraudulently use retail installment contracts. However, as stated by the Department, home equity lending fraud involving both home improvement salespersons and contractors is still a serious consumer protection issue. It was indicated by those who have been involved in this problem, and who pursue civil litigation for homeowners, that registered salespersons need to be regulated by the Board more aggressively, since they are so closely connected to the contractor who is involved in the home improvement business. That the Board needs to be able to better track salespersons who may scam homeowners, to require a bond to provide some form of restitution, and provide better training to its investigators in dealing with fraudulent practices by contractors and their salespersons.

ISSUE #7. (BOARD CONTINUE TO REGULATE ASBESTOS CONTRACTORS?) Should the Board continue to certify and regulate asbestos contractors even though it does not have the appropriate expertise in this area?

Recommendation #7: *The Joint Committee recommends that the Board should transfer responsibility for regulating contractors involved in asbestos abatement to the Department of Occupational Safety and Health by July 1, 2001.*

Comments: While the Board has the authority to discipline contractors who violate the laws pertaining to asbestos abatement, the Board staff does not have the expertise to determine whether the actions of a contractor have resulted in a relevant violation. For such cases, the Board must rely on the investigations and testimonies of experts from the Department of Occupational Safety and Health (DOSH) or similarly qualified local officials. Consequently, the Board has agreed that its asbestos certification program should be administered by DOSH.

ISSUE #8. (WHEN WILL OCCUPATIONAL ANALYSES OF CONTRACTOR EXAMS BE COMPLETED AND ARE ALL WAIVERS FOR EXAMINATIONS NECESSARY?)

The Board finally evaluated its contractors examinations in April 1999, as requested by the Joint Committee during its review in 1996, but it still has been unable to update the occupational analyses for many of its licensing examinations and replace “overexposed” test questions. It is also still unclear whether all of the different type of waivers for the licensing examination should be continued.

Recommendation #8: *The Joint Committee recommends that the Board complete an occupational analysis for all of its contractor examinations as per “Schedule for Completion of Occupational Analyses” provided to the Joint Committee, and sooner if possible. The authority of the Board to waive examinations under a number of different circumstances should be independently evaluated by the Board. It should be determined whether each and every waiver permitted assures that applicant has the appropriate experience, knowledge and skills so that an examination within a particular licensing classification is not necessary.*

Comments: The Board has been aware of the problems associated with its examinations since 1993, and again in 1996. The Joint Committee was very clear about moving ahead with validation (occupational analyses) of its examinations right away when recommendations were made by the Joint Committee in April 1997. (Many of its licensing examinations have not been validated for at least 14 years.) Three years have now elapsed (and six years since the issue was first raised) and the Board finally has a schedule to update these examinations. However, all examinations will not be validated until June 2002. The Board indicates that neither the Board, nor any other state or private agency has the resources to perform occupational analyses for all of the Board’s examinations simultaneously. The Board indicated that it is taking on the maximum number of projects in could accommodate for fiscal year 1999/2000. That is has set a priority list for performing an occupational analysis on other examinations and expects to have all completed by June 2002.

The need for the Board to move ahead immediately with occupational analysis of its examinations is even more critical now because of a recent court decision. A California federal court has indicated that in order to protect the civil rights of applicants for professional licensure, examinations used to assess competence must meet the test of “job- relatedness.” (See, *AMAE, et.al. vs. California Commission on Teacher Credentials*) According to the U.S. District Court, this standard requires periodic validation of each examination a candidate is required to take. While the court did not specify a standard for periodic review, it did indicate that an analysis performed five or more years prior does not provide a sufficient defense to its validity. Certainly, the licensing of examinations of the Board, which have not been validated in 13 years, will not be legally defensible if contested. (It should be noted that it cost the California Commission on Teacher Credentialing over \$3 million to defend its licensing examinations, some of which the court invalidated.)

The issue involving waiver of examinations was also brought to the attention of the Board in 1993, and again by the Joint Committee in 1996. The Board currently waives the examination for about one-third of all potential contractor licensees. (In FY 1998/99, this was about 7,800 applicants for licensure out of 25,400 total applicants.) Since this is such a large number of applicants not subject to an examination, there was some question whether all of the different types of waivers permitted assured that applicant has the appropriate experience, knowledge and skills necessary for licensing classification. The Board was directed by the Joint Committee in 1997, to use an independent exam expert to determine if the different categories of exam waiver assure that the applicant has the requisite skills for licensure. The Board has analyzed data to determine whether those receiving a waiver pose a

greater public threat than those who take the examination. They reviewed the complaint history for those who took the examination and for those who had the examination waived over the past 5 years (about 128,000 licensees). They found that the complaint experience for these two groups was identical – 88 percent of those who took an exam and 88 percent of those whose examinations were waived had no complaints. Of the remaining 12 percent who had complaints, most (more than 60 percent) had only one complaint, regardless of their path to licensure. As the Board stated, “The clear conclusion is what commonsense tells us – a few bad apples account for nearly all consumer harms. We take comfort in finding that 19 out of 20 contractors have the contracting and business skills to succeed without harming consumers. Still more comforting is the finding that the examination and waiver processes maintain the same quality.”

This analysis by the Board still does not address whether each and every type of waiver assures that the applicant has the requisite skills. Some contractors who had the examination waived for a particular purpose, such as being a family member in a contracting business, may have more or less complaints than one who comes in from out-of-state and is granted a waiver because of prior experience. Also, the fact that complaint experience is equal may indicate that it could be lower for those applicants who do not have to take the examination, if they were required to take the examination in the first place. Finally, this Committee heard both in testimony and in the Board’s response to this issue that “a few bad apples account for nearly all consumer harms.” This Board receives approximately 32,000 complaints per year, and over a four-year period this Committee evaluates, that amounts to over 128,000 complaints. And even though there are currently 215,500 active licensees, the extent of consumer harm that is occurring should not be underrated by the Board.

ISSUE #9. (PROVIDE FOR MORE ADEQUATE RESTITUTION OF HOMEOWNERS?)
Current forms of restitution provided to consumers for financial injury, suffered as a result of a contractor’s fraud, poor workmanship, malfeasance, abandonment, failure to perform, or other illegal acts, are inadequate. Although the Board reviewed changes to the surety bond process and possible use of a recovery fund, it rejected any changes. It instead presented some preventative measures for dealing with this problem which it calls the “Home Improvement Protection Plan 2000.” Should the Legislature consider making any changes to the surety bond requirements, establishing a recovery fund for injured consumers, and implementing the preventative measures recommended by the Board?

Recommendations #9: *The Joint Committee recommends that the Legislature review and consider the following:*

(1) **Use of Surety Bonds to Compensate Homeowners.** *Changes to the “pay-out” criteria that places an undue burden on the homeowner to collect on the contractor’s surety bond should be considered. Consideration should also be given to raising the bond amount, a “step-bonding” approach based on the amount of the prime contract, requiring performance bond for higher end contracts, or providing for some form of insurance to the homeowner and requiring mandatory general liability insurance for contractors..*

(2) **Use of a Recovery Fund to Compensate Homeowners.** *More serious consideration and study should be given to the use of a recovery fund similar to other states if an appropriate funding mechanism can be found.*

(3) Implement Some of the Boards Recommended Preventative Measures. *Any improved information for consumers on mechanic's lien law should await review and study by the California Law Revision Commission and the proposed task force of the Department. The Board should require that other information (and notice) be provided to homeowners, such as insurance coverage, down-payment limitations, the process of payment, the use of conditional and unconditional releases, and other ways in which consumers can avoid financial injury. The Board should provide for more stringent enforcement of these notice requirements.*

Comments: The Board has agreed that the current forms of restitution are insufficient to compensate consumers when they are financially injured by licensed contractors. The Joint Committee directed the Board to examine this issue and report back to the Committee before its next review. During this time the Board has considered several proposals and alternatives. In September 1998, the Registrar for the Board investigated the possible methods for providing consumers with a "safety net" and presented to the Board several proposals for them to consider. They included: (1) a "step-bonding" program based on the amount of the prime contract—the higher the amount of the contract, the higher the required bond; this would bring the existing bonding requirement in closer alignment with the potential loss; (2) a mandatory payment or performance bond—again tied to the value of the contract; and (3) the establishment of a recovery or restitution fund, funded by contractors as a requirement of licensure and maintained by the Board.

As indicated by the Center for Public Interest Law (CPIL), most Board members opposed all of the Registrar's proposals. Members opposed the bond recommendations, stating that they would act as a "barrier to entry" for new applicants and may not be acceptable to the legislature. The idea of a restitution fund financed by contractors' licensing fees and administered by Board was also not well received by the Board. Members noted that any increased costs imposed on contractors would be passed on to consumers. One Board member vehemently opposed the restitution fund idea, arguing that these types of funds reward consumers who do not act wisely during contract negotiations at the expense of consumers and contractors who do. He argued that **consumers should be responsible for protecting themselves**. (This member is no longer with the Board.)

After the Board rejected proposals presented by its Registrar, its staff commenced work on a variety of proposals to protect consumers and enable them to better protect themselves. It is now proposing what it titles as the "Home Improvement Protection Plan (HIPP) for the year 2000. These are primarily preventative measures to assure the homeowner receives appropriate notice of the mechanics lien law, contractor's insurance coverage, and appropriate billing and payment practices.

ISSUE #10. (CONSISTENT POLICY AND PROCEDURES FOR INVESTIGATING COMPLAINTS AND TAKING DISCIPLINARY ACTION?) There has been some concern about how the Board deals with complaints once a civil lawsuit has been filed or a settlement agreement is reached. Also, that there has been inconsistent application and notification by the Board of the ruling in the Terminex case. (In this 1948 case, the court held that a contractor should be provided an opportunity to make corrections or complete the work before disciplinary action is pursued.)

Recommendation #10: *The Joint Committee recommends that the Board assure that there are consistent policies and procedures for investigating complaints and taking disciplinary action, even though a civil lawsuit has been filed by the complainant, or a settlement agreement has been reached between the parties.*

The Board should also assure that there is consistent application and notification of the Terminex case ruling, which allows a contractor the opportunity to correct defective work or complete the job before disciplinary action will be pursued.

Comments: The Board indicates that it investigates all violations of the Business and Professions Code, regardless of whether a civil lawsuit has been filed. However, if a settlement agreement is reached between the parties, the Board's ability to act depends on the conditions of the settlement. For instance, if the settlement states that any complaint pending before the Board will be withdrawn, it will generally preclude the Board from taking action. However, the Board clearly has authority and, in fact, responsibility to take action outside the settlement if violations of contractors license law exist.

Some consumers have complained that the Board declines to take independent or additional action when a consumer files civil suit against a licensee, and will actually close complaints pending the outcome of court action. They have also indicated that the Board will not pursue any action against a contractor upon the settlement of a civil case, and have cited a 1948 court case, *Terminix Co. v. Contractors State License Board*, for taking that position. It appears as if the Board needs to assure that its investigative personnel are clear about pursuing complaints even though a civil law suit has been filed, and what appropriate procedures should be followed subsequent to a settlement agreement, especially if it does not prevent the Board from pursuing the complaint. Also, it should clear what the *Terminix* case requires, and as indicated by the Board, that the notification to the contractor is uniformly given by consumer representative in its local offices and by its field deputies.

ISSUE #11. (CHANGES TO APPLICATION REVIEW AND VERIFICATION PROCESS NEEDED?) The Board only verifies and investigates a small percentage of applications and has no fingerprint program to check prior criminal history of applicants?

Recommendation #11: *The Joint Committee recommends that the Board improve the applicant review process. This includes increasing the number of application investigations and providing more accurate licensing information to consumers. The Joint Committee also recommends that the Board pursue legislation to authorize fingerprinting in the application and renewal processes to check on any possible criminal convictions of the applicant or current licensee.*

Comments: During hearings in 1993 by the Assembly Consumer Protection Committee, the Board was criticized for only investigating about 3% of all applications as required by law. In response to this, the Board initiated a program whereby 50% of applications were verified for work experience, or other related information, to determine if there was a greater number of falsifications and ascertain whether there was a need to increase the number of investigations. (The eventual goal of this program was to verify 100% of the applications.) The Board discontinued this program due to lack of funding. (A BCP to continue this program was denied by the Department of Finance. They argued that there was only an 8% problem and the cost did not justify continuing with this program.) The Board recommended at that time continuing with this program and to do 100% verification rather than just 50%. The Board has now adopted an objective in its Strategic Plan to increase the number of application investigations to 8%.

Other boards and the Department have initiated a fingerprint check program to check on potential for a prior criminal record concerning licensees. At present, the Board has no structured means of acquiring information about its licensees' criminal convictions. The Board is currently seeking legislative authority to require applicants to submit fingerprints and to have them verified by DOJ.

ISSUE #12. (CHANGE SUBSTANTIAL RELATIONSHIP CRITERIA FOR CRIMINAL CONVICTIONS OF CONTRACTORS?) Should the “substantial relationship” criteria on criminal convictions be expanded as it applies to applicants for licensure, current licensed contractors, certified home improvement contractors and registered salespersons?

Recommendation #12: *The Joint Committee recommends that the Board revise its regulation describing the “substantial relationship” criteria so that the test is more than just whether a crime is specifically construction related or not. The test should be whether the crime is substantially related to the qualifications, functions and duties of a contractor to be licensed by the State, not merely construction. The Joint Committee also recommends that the Board seek legislative authority as necessary to define the “substantial relationship” criteria of those seeking a home improvement certification, and to extend the sunset date of the program.*

Comments: As written, Business and Professions Code section 480 allows all boards under the Department umbrella to deny a license to an individual who has committed a crime (or a bad act) substantially related to the qualifications, functions or duties of a licensee. The review process includes two parts. In the first, the threshold determination is made as to whether a crime is substantially related to the qualifications, duty and functions of a contractor licensee. In the second part, a determination is made as to whether the individual is sufficiently rehabilitated so that licensing is, nonetheless, appropriate.

In past years, the “substantial relationship” test was applied only to crimes that were specifically construction-related. This misinterpretation came from examples in the Board regulations which were unnecessarily restrictive and gave the wrong impression about how to apply the test. As a result of this restrictive view, an assault at a construction site was considered “substantially related” but an assault on the way home was not. Over the past year, the Board has spent considerable time addressing the relevance of criminal convictions to the qualifications, functions and duties of a licensed contractor. The Board has directed its staff to revise the regulation describing the “substantial relationship” criteria used in the present regulation. The test will be whether the crime is substantially related to the qualifications, functions and duties of a contractor, not merely to construction.

The Board’s staff is presently examining whether a criminal conviction history should be explored not just as part of the licensing process but as part of the decision to grant a home improvement certification. Homeowners contracting for home improvement work are the Board’s most vulnerable population. Under this proposal, there would be some crimes which might disqualify a licensee from getting a home improvement certification. For example, a registered sex offender might be licensed but never be certified. In addition, there might be violent crimes where “commercial” licensing might be appropriate long before home improvement certification is warranted. The Board indicates that this type of proposal should not be adopted merely through Board regulation, but would require a change in the laws governing Home Improvement Certification as well as assurance that the certification would not sunset as scheduled on January 1, 2004.

It should be noted that the Board itself has been somewhat hesitant to make changes in this area. The Joint Committee should seek clarification that the Board has, in fact, voted to change the current regulation regarding the “substantial relationship” criteria, and what specific direction was given to staff.

ISSUE #13. (BROADEN DISCLOSURE POLICIES FOR LICENSED CONTRACTORS?)

The Board currently provides limited information on the status of licensed contractors, and consumers have complained about being misled or misinformed about either the status or background of the licensed contractor.

Recommendation #13: The Joint Committee recommends that the Board convene public hearings to revisit its disclosure policy and report to the Joint Committee by September 1, 2001. In the meantime, the Board should clearly advise consumers that they are only providing limited information concerning the status and background of the contractor.

Comments: The Board's current disclosure policy is governed by Board Rule 863, entitled Public Access to Information. This rule, which has been in place since 1992, provides for public disclosure of a complaint against a licensee that has been referred to legal action. In short, this policy allows complaints against contractors to be made public if the Board, through an investigation, has demonstrated a violation of contractors license law and has referred the case either to a DA or the Attorney General's office. Since this rule has been in place for seven years, the Board has established in its current strategic plan a goal of convening a number of public hearings early next year to revisit this disclosure policy to see if it needs to be updated. With the increase in the use of technology now available to provide consumers with instant access to information, the Board plans to ascertain whether its current disclosure policy is the one that best serves the public.

However, consumers have complained that they are misled by information provided by the Board concerning the status of a contractor's license. That the Board's statement that a licensee is in good standing is no guarantee that there aren't past civil or criminal judgments against the licensee, or that they have repeated complaints pending, or have been involved in prior arbitration proceedings, or stipulated or settlement agreements. They have indicated that the Board should clearly advise them that they are only providing limited information concerning the status and background of the contractor, or disclose all relevant information concerning the licensee so they can make informed decisions about hiring a contractor.

ISSUE #14. (BOARD ADEQUATELY PURSUING VIOLATIONS OF LAW BY LICENSED CONTRACTORS?) It is still unclear whether the Board is focusing enough of its resources on violations of the Contractors' State License Law by licensed contractors when compared to its efforts to "eradicate" unlicensed contractors.

Recommendation #14: The Joint Committee recommends that the Board provide more detailed information on what actions it has taken against unlicensed contractors versus licensed contractors over the past four years. This should include budgetary information, as well as enforcement activity, and restitution provided to the consumer involving unlicensed versus licensed contractors.

Comments: There has been some criticism leveled at the Board that they spend a disproportionate amount of time and resources going after unlicensed activity and not enough on dealing with violations of the Contractor's Act by licensed contractors when complaints are filed with the Board. The Board has responded by stating that it has made substantial progress in the "eradication of illegal, unlicensed contractors." The Board claims that enforcement activity in this area has resulted in the reduction of the number of consumers that file complaints with the Board alleging that they have fallen victim to an unlicensed contractor. In FY 1995/96, 5,100 consumers reported that they had been victimized by an

unlicensed person as compared to approximately 3,500 in FY 1998/99. The Board seems to be indicating that it only spends 10% of its budget in pursuing unlicensed activity.

Even though the Board provided some evidence of its efforts involving unlicensed activity, it is still difficult to determine if the Board devotes adequate resources and enough effort to pursuing complaints filed against licensed contractors. (It should be noted that there are twice as many complaints involving licensed contractors.) For example, it is unknown why so few actions are initiated by the board (as compared to the public) for workmanship/abandonment by a contractor. (Are consumer complaints the only way the Board can initiate action for these violations?) Also, it is unknown what licenses have been revoked outright, rather than the Board placing the contractor on probation or receiving a default decision (simply letting the license go by default). The Board indicated in fiscal year 1998/99, there were 104 default decisions which account for most of the 182 license revocations within that year. Of the remaining number, most revocations were stayed and the licensee placed on probation. (All other boards which have been subject to sunset review have been able to provide the number of outright revocations of a license. They also publish those licensees whose license has been revoked.)

The Joint Committee should recognize that this is not a criticism of the Board's efforts in either of these areas at this time, it is simply a request for information and clarification of this issue by the Board. Some of this information was specifically requested by Committee members.

ISSUE #15. (NEED TO IMPROVE REPORTING OF VIOLATIONS OF LAW BY LOCAL BUILDING OFFICIALS?) Although the Board has been actively working with local building officials, and providing them with better assistance and information, there still has not been a significant increase in the reporting of violations of the Contractors' State License Law by local building officials.

Recommendation #15: *The Joint Committee recommends that the Board continue its efforts to cooperate with local building departments and the California Building Officials leadership to provide better enforcement of building codes, and increased reporting of violations of the Contractors' State License Law.*

Comments: When the Joint Committee reviewed Board in 1996, it noted that of 30,000 complaints filed with Board, only 127 were filed by state or local agencies. The Joint Committee indicated that local building officials are considered to be in the best position to discover and report incompetent or unlicensed contractors. The Board believed that this lack of referred complaints is due in part to a lack of awareness on the part of the local agencies of laws pertaining to contractors. The Joint Committee recommended that the Board should implement a program to work more closely with local building officials and the State Buildings Standards Commission to provide ongoing training and information to building officials concerning potential violations of the Contractor's Act . It was intended that this program and effort by the Board would improve reporting of violations of the Contractor's Act.

The Board has accomplished this task. And although violations of the Contractors' State License Law have not increased as yet, it is anticipated that this effort and continued interaction with local building officials will improve enforcement efforts over time.

ISSUE #16. (CHANGE COMPOSITION AND MEMBERSHIP OF THE BOARD?) Should this Board be allowed to sunset and the current membership eliminated, and be reconstituted with a new membership that can provide true consumer representation and protection?

Recommendation #16: *The Joint Committee recommends that the current Board be allowed to sunset, and the Board be reconstituted as of July 1, 2001. The Joint Committee also recommends that a review of the newly reconstituted Board be conducted within two years. In the meantime, the Legislature should consider how the new board membership should be recomposed so as to assure adequate consumer representation and protection. It should assure that all public members of the new Board are truly public members, and that they are not: (1) current or past licensees of the Board, (2) a family member of a licensee, (3) formerly connected with the construction industry, or (3) have any financial interest in the business of a licensee of the Board, and that they meet all of the other requirements for public membership pursuant to the Business and Professions Code. The composition of the new Board should continue to be a simple public majority.*

Comments: There has been a dissatisfaction with the efforts of this Board by members of the Joint Committee and Department to address major issues involving protection of consumers, and concern about whether this Board will adequately deal with these matters in the future. Some of the more specific problems with this Board include:

- A lack of response to consumer complaints which involve licensed contractors.
- Excessive delay in investigations and inconsistent procedures and policies regarding investigations, especially if a civil action is pursued by a homeowner against a contractor.
- An inability of the Board to identify inadequacies in existing law and offer recommendations for dealing with home equity lending scams by contractors and salespersons.
- Rejection by the Board of any changes necessary to improve restitution provided to homeowners when they suffer financial injury as a result of a contractor.
- Concern about the direction the Board is taking in closing down field offices, and whether these changes will improve complaint handling and investigation of cases, and what impact this will have on consumer access to Board staff.
- Lack of response by the Board to updating their contractor examinations and reviewing their waiver process.
- Misleading the public about the status and background of a contractor.

Members of the Joint Committee have also raised concerns about the appointment and make-up of the public membership of the Board. That in some instances past public members may have been in some capacity connected to the construction industry. There is also some concern that one of the public members is a local building official and that they could be a licensee of the Board. (Although the current local building official public member is not.)